

## **REMARKS**

The present Amendment is in response to the Office Action dated May 10, 2005 in reference to the above-identified application. The Examiner has set a shortened statutory period for response to this action to expire three (3) months from the mailing date of the communication, making the present Amendment due by August 10, 2005.

In that Office Action, claims 1-38 were pending. Of these, claims 1-5, 7, 10, 12-20, 23-27, 30-32, and 38 were rejected as anticipated by U.S. Patent No. 1,780,408 to Smith under 35 U.S.C. §102(b). Claims 6 and 35-37 were rejected as obvious over Smith '408 under 35 U.S.C. §103(a). Claims 8, 21, 28, and 33 were rejected under 35 U.S.C. §103(a) as obvious over Smith '408 in view of Muhmel et al. (DE 197 53 956).

Applicant notes with appreciation the Examiner's indication that claims 9, 11, 22, 29, and 34 contain allowable subject matter. Applicant also notes with appreciation that the Examiner has reinstated previously withdrawn claims 31-37.

In response to the Office Action, Applicant has parenthetically noted the reinstated claims 31-37 as original and presented the text of the claims as originally submitted. Dependent claim 9, indicated by Examiner as containing allowable subject matter, has been rewritten as newly presented independent claim 39. Accordingly claim 9 has been canceled.

Turning to the substantive rejections of the various claims it is helpful to first review Smith '408 since the Examiner relies on Smith in most of his rejections. Smith teaches a container with a body 2 and a cap 3. Inside the body are layers of insectifuge absorbing felt 7, 8, and 9. One of the felt layers 9 is sandwiched between

the flange 4 on the body and the lid. In order to clamp the lid in place there are a plurality of fingers 5 that are punched out of the lid material and then bent over the flange of the body. It is important to note that the felt material is only exposed in two areas. The first exposed area is through the punched opening 23 in the cap. The second exposed area is the periphery of the felt sandwiched between the lid and the flange. In no way is the bottom surface 7 of the felt exposed. It is also important to note that the clamp fingers 5 in no way act as upright bars, posts, or supports. Nor do clamp fingers 5 support the felt material. Because the lid is not easily removable once the fingers 5 are bent over flange 4, Smith facilitates refilling the container with insectifuge by providing an opening 23 in the lid (Col. 3, Line 44).

Claims 1-5, 7, 10, 12-20, 23-27, 30-32, and 38 have been rejected as being anticipated by Smith. These claims have not been amended because Smith does not fully and fairly disclose all of the limitations of these claims.

Claims 1 and 38 both recite a piece of porous material that is affixed to said setting at an orientation relative to said securement member such that ambient air can flow about at least a portion of both the top and bottom surfaces. Smith does not teach these limitations because the absorbent material in Smith is not affixed in relation to the securement; it is instead contained within the body and lid of the setting. Furthermore, the absorbent material is not contained such that air is allowed to flow over any portion of the bottom surface because the base fully contains the bottom surface of the material. Claims 1 and 38 should therefore be allowed. Claims 2-11 should also be allowed because they ultimately depend from claim 1.

Claim 12 recites a plurality of stanchions secured to said base and a collet supported by said stanchions in spaced relation to said base. Similarly, claim 38

recites a plurality of stanchions secured to a setting. Smith does not teach the use of stanchions extending upward from a base to support a collet. Smith instead teaches a plurality of fingers that are used to clamp the lid to the body thereby creating a container that holds the absorbent material. If on the other hand, the Examiner maintains that the fingers 5 are stanchions secured to the base 2 then it is clear from figures 2-4 that the stanchions are secured to the base at flange 4. However, the Examiner contends that flange 4 is actually the collet. The flange cannot act as both the base on which the stanchions are secured and at the same time act as the collet that is supported by the stanchions in spaced relation to the base. Claims 12 and 38 should, therefore, be allowed because Smith does not teach all of the limitations recited in claims 12 and 38. It follows, that dependent claims 13-23 should also be allowed as ultimately depending from an allowable claim.

Claim 38 also recites a setting including a plurality of stanchions where prongs are formed as extensions of said stanchions and where the porous material is supported by said prongs. Again, Smith does not disclose the recited limitation because Smith teaches containing and enclosing the absorbent material within the body and lid, not supporting the absorbent material with prongs formed as extensions of stanchions as claim 38 recites.

Claim 24 recites a porous material including a top surface and bottom surface opposite said top surface wherein both said top and bottom surfaces are operative to receive a fragrance producing composition. Just as more fully discussed above where Smith does not allow air to flow about the bottom surface of the absorbent material, fragrance producing composition would not be able to flow about or be received by the bottom surface of the absorbent material. Claim 24 also recites

stanchions secured to said securement member where said stanchions are operative to support said porous material. Assuming arguendo that the fingers 5 are stanchions, the fingers are not secured to the securement member 14 but to the body 2 and the fingers are not operative to support the absorbent material. The fingers in Smith are simply intended to secure the lid to the base. Because Smith fails to disclose the limitations recited in claim 24 the claim should be allowed. Furthermore, claims 25-30 should be allowed because they depend from claim 24.

Claim 31 recites a method for extending the scent of a selected fragrance on a piece of jewelry. As the Examiner points out, the invention disclosed in Smith would require the disassembly of the lid 3 from the body 2 in order to practice the method of claim 31. However, Smith teaches a container constructed in a way that is not intended to be disassembled. The plurality of fingers 5 that are bent around the flange render it impractical to disassemble the container in order to remove the absorbent material. Smith does, however, teach a method of replenishing the insectifuge by adding more liquid through opening 23 but does not provide for the removal and washing of the absorbent material with a solvent. Claim 31 is patentably distinguished from the applied prior art and should be allowed. Claims 32-37 depending from claim 31 should also be allowed.

Claims 8, 21, 28, and 33 have been rejected as obvious over Smith in view of Muhmel. These claims should be allowed as they ultimately depend from allowable independent claims. Furthermore, there is no motivation or suggestion to combine Smith and Muhmel. It appears that the Examiner has employed hindsight reasoning to combine Smith and Muhmel where no motivation or suggestion to do so exists. Muhmel discloses a sealed cartridge. Applying a sealed cartridge to Smith would

defeat the purpose of the invention. Combining Smith and Muhmel would result in a sealed container filled with a ceramic containing aluminum oxide, a combination that does not match the limitations recited in the claims.

Due to this Amendment, a new filing fee calculation is provided, as follows:

Maximum Total Claims This Amendment		Total Claims Previously Paid For	
38	-	38	= 0 x \$ 25.00 = \$00.00
Total Independent Claims Per This Amendment		Maximum Independent Claims Previously Paid For	
6	-	5	= 1 x \$100.00 = \$100.00
Additional Filing Fee Due			\$100.00

Accordingly, our check no. 5152 in the amount of \$100.00 is enclosed. The Commissioner is hereby authorized to charge any deficiency in the payment of the required fee(s) or credit any overpayment to Deposit Account No. 13-1940.

Based on the foregoing, Applicant submits that the present application is in complete condition for allowance, and action to that end is courteously solicited. If any issues remain to be resolved prior to the granting of this application, the Examiner is requested to contact the undersigned attorney for the Applicant at the telephone number listed below.



Respectfully submitted,

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**CERTIFICATE OF MAILING UNDER 37 C.F.R. 1.8**

I hereby certify that the foregoing **Response to Office Action (14 pages), Check No. 5152 in the amount of \$100.00** is being deposited with the United States Postal Service as first-class mail in an envelope addressed to Mail Stop Fee Amendment, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on this 6<sup>th</sup> day of August, 2005.

Christy L. Burbank  
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